

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1409 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE D. H. VAGHELA

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UNION OF INDIA

Versus

T R KUMAR

Appearance:

MRS SIDDHI D TALATI for Petitioners
MR MS TRIVEDI for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE D. H. VAGHELA

Date of decision: 13/03/2000

ORAL JUDGEMENT

Per R.K. Abichandani, J. :-

1. This petition is directed against the judgement and order dated 8th October, 1999 of the Central Administrative Tribunal in O.A. No. 578 of 1998 by which the impugned memo of charges issued against the respondent initiating inquiry proceedings against him was quashed and the petitioners were directed to pay his retirement dues with interest.

2. The respondent was served with a charge-sheet on the date of his retirement i.e. 30th April, 1998 by affixing the same on the door of his residence as well as

of the office. The Tribunal, after examining the relevant facts on the record, came to the conclusion that the charge-sheet was not properly served on the applicant, prior to his retirement. It was the case of the appellants that the respondent had refused to accept the charge-sheet on 30-04-1998. The Tribunal found that there was no evidence adduced to show that the respondent had refused to accept the charge-sheet or that the charge-sheet was tendered to him, as alleged by the appellants. It was found that no affidavit of the person, who tendered the charge-sheet to the present respondent, was filed by the petitioners. Even when in his rejoinder the present respondent asserted that the charge-sheet was not tendered to him, the petitioners did not file the affidavit of the person who tendered the charge-sheet on the present respondent. It was also found that there was no evidence as to when the copy of the charge-sheet was affixed on the door of the railway quarter where the respondent was residing. The Tribunal, rightly, observed that it was for the present petitioners to show that the charge-sheet was affixed on the door of the respondent prior to his retirement and, that since no evidence was led on this aspect, the petitioners had not discharged the burden of proving that the charge-sheet was properly served on the present respondent. The Tribunal noted that no affidavit of the person, who had affixed the charge-sheet on the door of the residence of the respondent, was filed by the petitioners nor was any evidence led, by way of affidavit of any person in whose presence it was so affixed, to show that the charge-sheet was duly served. The Tribunal has, thus, for cogent reasons, come to the conclusion that the petitioners had not established that the charge-sheet was served on the respondent before his retirement. The Tribunal had noted that for the purpose of holding a departmental inquiry against the present respondent who had already retired, a separate procedure was prescribed which was admittedly not followed. It would be, obviously, open for the petitioner-authorities to follow such procedure of post-retiral departmental inquiries, if it is permissible in the case of the respondent. So far as the impugned order is concerned, we uphold the same on the ground that the charge-sheet is not shown to have been served on the respondent, prior to his retirement. This petition is, therefore, summarily dismissed.

(R. K. ABICHANDANI, J)

(D. H. VAGHELA, J.)

/shamnath